

FINANCIAL REFORM

Mr. CORKER. Mr. President, I thank my friend from North Dakota, because I, too, for what it is worth, have been very distressed about the conversations around financial reform. I don't think either side of the aisle deserves a badge of honor as it relates to the way this has been discussed. I agree with him that this is something way beyond using poll-tested language and should, in fact, be dealt with in a serious manner. So although I didn't hear all the Senator's comments, I agree with him that we ought to deal with this in a serious way.

Mr. President, you and I have had a number of conversations over the last weekend regarding financial reform. We have had a lot of conversations over the last year regarding financial reform. As I have watched the public discussions over the last several days, I have been greatly distressed. As a matter of fact, I spoke this morning to a large number of businessmen in Nashville, TN, and, candidly, became so angry thinking about the way this debate has evolved that I had to think about coming here today and controlling that and using that in a productive way.

I have noticed throughout the day that maybe the rhetoric has changed a little, and I know that my friend and colleague from Virginia and my friend and colleague from Connecticut had a press conference earlier today to talk about some of the issues that are being talked about rhetorically. Let's face it, what is happening right now—and it is unfortunate for the American people—is that both sides of the aisle are trying to herd up folks with language that in many ways I don't think does justice to this issue, which is very important, is very difficult, and something that is very much needed in our country.

There has been a lot of discussion about this funding mechanism—this \$50 billion bailout fund, if you will. Those are someone else's words, by the way, not mine. The American people are probably tuning in, and in some cases they are wondering how we are jumping into the middle of this on the Senate floor without a lot of free dialogue.

The fact is, we have a financial reg bill that I hope comes before us soon that will deal with orderly liquidation so that when a large institution fails, it actually fails. I think that is what the American people would like to see happen. So there has to be a mechanism in place.

If a firm is systematically important to our country, there needs to be the tools in place to make sure it actually goes out of business. I don't think people in Tennessee like seeing that when a community bank fails it actually goes out of business, but when a large Wall Street firm fails we prop it up.

I wish the Senator from Virginia, who happens to be presiding, were on the floor so we could have a colloquy on this because the fact is, this is something that needs to be dealt with

in legislation. We need to know we have a process where we deal with derivatives and we don't have a lot of people building up a lot of bad money, instead of doing it on a daily basis and they end up in a situation where there are huge obligations. We need to deal with some of the issues of consumer protection.

So, Mr. President, there has been a lot of discussion about how we create something called debtor-in-possession financing, so that when the FDIC comes in and seizes one of these large firms that fails, it has the money to keep the lights on and to make payroll and those kinds of things while it is selling off the assets of the firm.

The fund that has been discussed in this bill—and that is going to be changed, I know, and I am fine with that and think that is perfectly good—but this fund that has been set up is anything but a bailout. It has been set up in essence to provide upfront funding by the industry so that when these companies are seized, there is money available to make payroll and to wind it down while the pieces are being sold off.

Now, a lot of people have said this is a Republican idea. There is no question this is something that Sheila Bair has proposed. The FDIC wants to see a prefund. The Treasury would like to see a postfund; they would like to see it come after the fact.

At this point I want to digress for one second and say I hope the reason that Treasury wants a postfund is not because, in lieu of having a prefund of \$50 billion from these large institutions, they want to see a bank taxed. As a matter of fact, I am going to be surprised if after Republicans argue against a prefund and it is changed, and the administration comes back and Chairman DODD comes back and we end up with postfunding—both of which do the same thing, I might add, and both of them work—but it will be interesting to see whether that argument basically leads to Treasury then having the ability to come back and do a bank tax. I think at the end of the day that is something they have been wanting to achieve.

So it is interesting how this debate is evolving. But let me go back to this prefund. At the end of the day, I think what all of us would like to see happen is to see these institutions go out of business. So do we put the money upfront to take them out of business or do we put it up on the back end where, in essence, what is happening is we are borrowing money from the taxpayers?

Would we rather the industry put up the money so the taxpayers are not at risk or would we rather that not happen and during a downtime, when it is procyclical, we actually get the firms to put up the money after the fact?

I think both of those, by the way, are nice arguments to have, and I think they should have been debated in the committee, and we can debate it on the Senate floor. But at the end of the day,

to make the total debate about whether it is pre or post—neither of which are central to the argument because both work—it really doesn't matter. Either way we have to have some monies available as working capital to shut down a firm. We can borrow it from the taxpayers, although I don't know if the taxpayers would like that very much. We can do it after the fact, as I have said, or we can put it in upfront by the industry. Either way it is going to be paid back by industry.

I will say that in the Dodd bill today there is postfunding; that if there are any shortfalls the industry will pay that back. So, again, it is kind of a debate that ends up being silly. The fact is, I know it is going to be changed. The essence of the bill, though, is the fact that we want to make sure these firms unwind and they go out of business.

Let me just talk about some of the arguments that are being made: Prefunding of resolution creates a system where certain participants are effectively designated as a protected class as a result of them paying into the fund.

I think that is ludicrous. That is a ludicrous argument. Now, what we could do, if it would make everybody happy, is instead of getting large firms to pay, we could get community banks to pay too. I don't think there would be many people who would be interested in that, but if we want to get everybody in the country and get the community banks in Tennessee—I am not interested in that, and I don't think the Senator from Virginia is interested in that—but if we want to do that, we can ensure nobody is part of the protected class. So I find that to be a ludicrous argument.

There is another argument: This allows such firms competitive funding advantage over smaller institutions such as community banks.

So, in other words, if we are saying these large firms, if they fail, are going to go out of business, and it is going to be more painful than bankruptcy, that somehow they are protected or have a competitive advantage, I find that to be kind of ludicrous, and I hope that argument is not used again. It probably will be, but I hope it would not.

Here is one I read recently: The fund is a signal to credit markets that the U.S. Government stands ready to prop up, bail out, and insulate large financial firms. Now that is an interesting one. The fact is, we are talking about orderly liquidation.

The existence of the fund allows managers of large financial institutions to conduct riskier practices, therefore counterparties will not feel obliged to perform due diligence because, in the event of stress, there is such a financial slush fund available to bail out unsecured and short-term creditors.

You have to be kidding me. That is absolutely the opposite of what is intended.